

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|-----------------------|---|------------------|
| M. DENISE TOLLIVER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. |
| v. |) | |
| |) | |
| HIGHMARK BCBSD, INC., |) | |
| |) | |
| Defendant. |) | |

NOTICE OF REMOVAL

Highmark BCBSD, Inc. (“Highmark”), through its undersigned counsel, hereby removes the above-captioned civil action filed by M. Denise Tolliver (“Plaintiff”) in the Superior Court of Delaware, Kent County, at Case No. K18C-02-010 WLW, to this Court under 28 U.S.C. § 1441 *et. seq.* As grounds for removal, Highmark states the following:

1. On February 12, 2018, Plaintiff filed a two-count Complaint against Highmark in the Superior Court of Delaware, Kent County, alleging claims for breach of contract and discrimination and retaliation under the Delaware Discrimination in Employment Act (“DDEA”), 19 Del. C. § 720 *et seq.* A true and correct copy of Plaintiff’s original Complaint is attached as **Exhibit A**.

2. Highmark responded by moving to dismiss both counts on the basis that Plaintiff’s breach of contract claim was time-barred and her DDEA failed because she did not timely raise such claims before the Delaware Department of Labor and never received a right to sue letter. A true and correct copy of Highmark’s Motion to Dismiss is attached as **Exhibit B**.

3. On May 10, 2018, the Superior Court granted Highmark’s Motion to Dismiss but granted Plaintiff leave to file an Amended Complaint raising her discrimination and retaliation

claims under federal law instead of state law. A true and correct copy of the Superior Court's order is attached as **Exhibit C**.

4. On May 14, 2018, Plaintiff filed an amended complaint in which she asserts claims for discrimination and retaliation under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.* A true and correct copy of Plaintiff's Amended Complaint is attached as **Exhibit D**.

5. On the basis of the federal claims asserted in Plaintiff's Amended Complaint, Highmark now removes the action to this Court.

6. "[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

7. Where, as here, "the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446.

8. This Court has original jurisdiction over this action under 28 USC § 1331 because the discrimination and retaliation claims in the Amended Complaint arise under a federal law: the ADA, U.S.C. § 12101 *et seq.*

9. Moreover, venue is proper because the United States District Court for the District of Delaware is the federal judicial district embracing the Superior Court of Delaware, Kent County, where Plaintiff originally brought suit. *See* 28 U.S.C. §§ 1441(a) and 1446(a)

10. Finally, this Notice of Removal is timely because it was filed within thirty days of the filing of Plaintiff's Amended Complaint on May 14, 2018, which was when it first became ascertainable that the case was removable because Plaintiff asserted a claim arising under federal law. *See* 28 U.S.C. § 1446(b)(3).

11. A copy of this Notice of Removal will be filed with the Clerk of the Superior Court of Delaware, Kent County.

WHEREFORE, Highmark hereby removes this civil action from the Superior Court of Delaware, Kent County, to the United States District Court for the District of Delaware.

Respectfully submitted,

/s/ Geoffrey G. Grivner
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Dated: May 25, 2018

Attorneys for Defendant